IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Bhanwar Lal & Anr. Vs. Shri Devi Lal & Anr.

D.B. CIVIL SPECIAL APPEAL NO.67/2006
against the order dt.6.7.2005 passed in S.B. Civil Misc. Appeal No.158/05.

Date of judgment : 24th March, 2006

PRESENT

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. Rajesh Choudhary for the appellants.

_____

Heard learned counsel for the appellants.

By this appeal the appellants challenge the order passed by learned Single Judge dated 6th June, 2005 in writ petition filed by them challenging the order dated 25.9.2003 passed by Motor Accident Claims Tribunal.

The appellants are the owners of the vehicle which was involved in the accident out of which Motor Accident Claim No.59/2003 arose, which was lodged before the Motor Accident Claims

Tribunal, Nathdwara (Rajsamand). By order dated 25.9.2003, Rs.50,000/- were awarded to the claimants under Section 140 by way of interim compensation in which it was stated that 'no fault liability' will be paid by the owner of the vehicle and the claim against the insurance company for no fault liability was rejected at this stage. Said order was not appealed at that time. However, that order was challenged by filing Misc. Appeal No.158/2005 which was dismissed by learned Single Judge on the ground that the order dated 25.9.2003 cannot be challenged at such belated stage.

However, the learned Single Judge directed the Tribunal to decide the claim petition expeditiously uninfluenced by his previous order as to insurer's liability towards discharging of no fault liability by the insured while passing the final order.

Obviously, the insurer's liability in respect of the amount ordered to be paid by way of interim measure under Section 140 cannot be different from what is held in respect of

ultimate award of compensation. The amount paid by way of no fault liability under Section 140 is an interim relief which is liable to be adjusted against final award, though not recoverable from the claimant. The liability of insurer will be co-extensive with the liability of the insured as may be held under the final award and, if ultimately under the award, insured is held entitled to recover the amount from the insurance company, if the insurer is held liable to indemnify the insured in respect of compensation and, if ultimately the insurer is not held liable, it would not make any difference. The owner will be entitled to file the appeal against the order of Motor Accident Claims Tribunal releasing the insurer from liability.

This being the position, the order under appeal does not require any interference independent of final award. However, we are informed by the learned counsel for the appellant that meanwhile the Motor Accident Claims Tribunal has made an award and has held the insurer liable to indemnify the present appellants but he has declined to adjust the amount granted by him by

way of interim measure against the insurer's liability. The remedy for the appellants is to prefer appeal against that part of the order and not by way of special appeal against the original order. He is not precluded by this order from challenging the final award on the aforesaid ground, if so advised.

Subject to above, the appeal is dismissed.

[R.P. VYAS], J. **[RAJESH BALIA], J.**

babulal/